

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE  
PLAYERS' CONCUSSION  
INJURY LITIGATION

No. 12-md-2323 (AB)

MDL No. 2323

**THIS DOCUMENT RELATES TO:**

**Hon. Anita B. Brody**

Tobiath Myers, et al.: Cause No.: 2:12-cv-02800  
Dominic Austin, et al.: Cause No.: 2:12-cv-04381  
Maurice Aikens, et al.: Cause No.: 2:12-cv-05476  
Estes Banks, et al.: Cause No.: 2:12-cv-07135  
Marcus Anderson, et al.: Cause No.: 2:13-cv-05206

**RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION OF PROPOSED CO-LEAD CLASS COUNSEL, CLASS COUNSEL, AND SUBCLASS COUNSEL FOR AN ORDER: (1) GRANTING PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT AGREEMENT; (2) CONDITIONALLY CERTIFYING A SETTLEMENT CLASS AND SUBCLASSES; (3) APPOINTING CO-LEAD CLASS COUNSEL, CLASS COUNSEL, AND SUBCLASS COUNSEL; (4) APPROVING THE DISSEMINATION OF CLASS NOTICE; (5) SCHEDULING A FAIRNESS HEARING; AND (6) STAYING CLAIMS AS TO THE NFL PARTIES AND ENJOINING PROPOSED SETTLEMENT CLASS MEMBERS FROM PURSUING RELATED LAWSUITS**

One hundred and seventy seven Plaintiffs in the above referenced actions, oppose Plaintiffs' Motion of Proposed Co-Lead Class Counsel, Class Counsel, and Subclass Counsel Motion for an order (1) granting preliminary approval of the class action settlement agreement; (2) conditionally certifying a settlement class and subclasses; (3) appointing co-lead class counsel, class counsel, and subclass counsel; (4) approving the dissemination of class notice; (5) scheduling a fairness hearing; and (6) staying claims as to the NFL parties and enjoining proposed settlement class members from pursuing related lawsuits for the following reasons:

1. Class action settlements must be fair to everyone.
2. The proposed settlement does not disclose all relevant information.

Contingency fee contracts between players and their attorneys impact the settlement and are relevant to the fairness of the settlement. The Court should request information regarding these agreements and consider the information in evaluating the fairness of the proposed settlement.

3. The proposed settlement is unfair to former players who filed lawsuits against the NFL. The former players who filed lawsuits have to pay contingency fees to their attorneys. The former players who did not file suit do not have to pay any attorney's fees. This imposes a penalty on the players who filed suit.

4. The Court should reject the proposed settlement and suggest changes to the agreement. The Court should suggest the following changes to the agreement:

- a. Attorneys' fees for all players must be structured to assure that there is no penalty to the players who filed suit;
- b. Any attorney who represented player(s) in the filed litigation may petition for attorneys' fees under the settlement agreement's attorneys' fee provision;
- c. Provide an incentive award to the players who forced the settlement by filing lawsuits; and
- d. Any other suggestions deemed by the Court to be appropriate.

5. Finally, the Court should appoint the undersigned counsel as liaison counsel to represent players who filed lawsuits, since their interests are not adequately represented by the current groups of Plaintiffs counsel.

For these reasons, the Court should deny the entire motion to approve class settlement and order the parties to resume mediation and/or resubmit the settlement agreement to address these issues.

This the 13th day of January, 2014.

Respectfully Submitted,

177 Former NFL Players

By Their attorneys:

/s/ Philip W. Thomas

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**CERTIFICATE OF SERVICE**

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I certify that I electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

This the 13th day of January, 2014.

/s/ Philip W. Thomas  
PHILIP W. THOMAS